UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/935,417 | 08/22/2001 | Leon V. Rudakov | 52200-8006.US01 | 9486 |

22918 7590 01/26/2006

PERKINS COIE LLP
P.O. BOX 2168
MENLO PARK, CA 94026

| EXAMINER | |
|---|---|
| LAM, ANN Y | |
| **ART UNIT** | **PAPER NUMBER** |
| 1641 | |

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Advisory Action Before the Filing of an Appeal Brief | Application No. 09/935,417 | Applicant(s) RUDAKOV ET AL. | |
|---|---|---|---|
| | Examiner Ann Y. Lam | Art Unit 1641 | |

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED 30 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 30 November 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

1/18/06

LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 11. does NOT place the application in condition for allowance because:
Applicant's arguments are not persuasive. Applicant argues that Alcime et al. does not teach that heparin induces cell in-growth and tissue regeneration, but rather teaches an optimal ratio of growth factor, heparin binding domain, and heparin or heparin binding peptide that optimally induces cell in-growth and tissue regeneration. Applicant states that one skilled in the art would recognize that it is the growth factors that induce cell in-growth and tissue regeneration. Applicant also argues that Collins et al. can fairly be relied upon for a teaching that the complex of heparin-like substances and bFGF, a growth factor, enhance endothelial cell growth. Applicant also argues that at the time of filing, heparin was known to inhibit cell adhesion and to inhibit mononuclear cell adhesion.

In response, Examiner points out that the claim recites "a coating of a cell adhesion peptide.....for enhancing endothelial cell growth". Applicant is claiming a product, not a method of use, and the limitation at issue, i.e., "for enhancing endothelial cell growth" is an intended use. Examiner also points out that the limitation does not require that the peptide directly enhances endothelial cell growth. The references cited by Examiner (Hubbell et al., and Collins et al.) teach heparin in combination with cell growth factors. Moreover, Collins et al. specifically cites that heparin or heparin-like heparan sulfate proteoglycans are necessary for activity of the heparin-binding fibroblast growth factor family (col. 3, lines 33-35). Thus, the references teach that heparin, at the least, is necessary for activity of growth factors and in activating growth factors, induces cell growth. In other words, even if Applicant is correct on page 4 that Hubbell et al. teach that it is the growth factors that induce cell in-growth and tissue regeneration, and that Collins et al. teach that it is the complex of heparin-like substances and a growth factor that enhances endothelial cell growth, heparin nevertheless induces cell growth at least indirectly because it is necessary for the activation of the growth factors.

Applicant also argues that Bhatnagar also fails to teach cell adhesion peptide carried on and attached to a porous polymer apparatus, and that Brown et al. teaches that the biologically active agent resides in the cavity and is for directional delivery. Examiner points out that both Alcime and Brown teach biologically active agents on a stent for treatment of damaged or diseased blood vessel. Examiner points out that the Office action relies on Alcime to teach the cell adhesion peptide, such as heparin, carried on and attached to a stent, and Brown et al. is relied upon to teach that heparin or collagen may be used on a stent for treatment of damaged or diseased blood vessels, and that Bhatnagar is relied upon to teach synthetic collagen as a better alternative to natural collagen because it does not cause adverse reactions.